REMARKS

New Matter Rejection

The Office Action dated August 18, 2008 indicates that new claims 45-50 raise new issues that would require further consideration and potential new matter. Applicant respectfully disagrees with this assertion. Applicant has cancelled claims 45-50 and thus respectfully submits that this rejection is now moot and should be withdrawn.

Rejection under 35 USC §112 (second paragraph)

Claims 45-50 were rejected under 35 U.S.C. §112, second paragraph, for the reasons set forth on page 3 of the Office Action. Specifically, the Office has indicated that these claims are indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

A §112 second paragraph rejection has two separate requirements, indefiniteness and failing to claim what applicant regards as the invention. With respect to indefiniteness, the "essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of (1) the content of the particular disclosure, (2) the teachings of the prior art, and (3) the claim interpretation that would be given by one possessing the ordinary skill in the pertinent art at the time the invention was made.: (MPEP §2173.02).

A rejection stating that the claims fail to set forth the subject matter that the applicant regards as the invention is only appropriate where the applicant has stated that the invention is something different from what is defined by the claims (MPEP §2172(a)). There is a presumption that the claims describe the applicant's invention, absent evidence to the contrary.

The Office's focus during examination for compliance with the requirement for definiteness under §112 (second paragraph) is whether the claims meet the threshold

requirements of clarity and precision, not whether more suitable language or modes of expression are available.

Applicant has cancelled claims 45-50. Applicant has added new claims 51-57. With these amendments, Applicant respectfully submits that the claims are clear, definite, and distinctly claim what Applicant considers to be the subject matter of the invention.

Conclusion

For the reasons stated above, Applicant respectfully submits that the rejections of claims 45-50 are now moot in light of the cancellation of these claims and respectfully requests that the Office withdraw these rejections. Applicant respectfully submits that new claims 51-57, as amended, are patentable and respectfully requests reconsideration and allowance of these claims.

Telephone Interview

Present Office policy places great emphasis on telephone interviews initiated by the examiner. For this reason, it is not necessary for an attorney to request a telephone interview. Examiners are not required to note or acknowledge requests for telephone calls or state reasons why such proposed telephone interviews would not be considered effective to advance prosecution. However, it is desirable for an attorney to call the examiner if the attorney feels the call will be beneficial to advance prosecution of the application. MPEP §408.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter has been added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,

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